

PROPOSED RULE 317 CLEAN AIR ACT NON-ATTAINMENT FEES

(a) Purpose

The purpose of this rule is to satisfy mandatory requirements as specified in Sections 182(d), 182(e), 182(f) and 185 of the 1990 amendments to the federal Clean Air Act (CAA).

(b) Applicability

This rule applies to major stationary sources of VOC or NO_x as defined in this rule. As required by Section 182(f) of the CAA, major stationary sources of NO_x are also subject to this rule in addition to major stationary sources of VOC. The fees required pursuant to this rule shall be in addition to any permit fees and any other fees required under other District Rules and Regulations. This rule shall become effective when the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Executive Officer, makes a finding that a Basin is not in attainment with the federal one-hour standard for ozone. This rule shall cease to be effective when the Administrator of the U.S. EPA designates a Basin to be in attainment of the federal one-hour standard for ozone.

(c) Definitions

- (1) **ATTAINMENT YEAR** is the calendar year that the Basin is mandated to reach attainment of the federal one-hour ozone standard pursuant to the CAA. Under the Severe 17 area designation, the attainment year is 2007. Under the Extreme area designation, the attainment year is 2010.
- (2) **BASELINE EMISSIONS** for a major stationary source, are calculated for each air contaminant, VOC and NO_x (including major stationary source fugitive and unpermitted emissions) separately, as follows:
 - (A) For existing major stationary sources prior to the attainment year, the baseline emissions shall be the amount of the actual emissions, including fugitives and unpermitted, during the attainment year (permitted emissions not to exceed permitted allowables).
 - (B) For sources that become subject to this rule during or after the attainment year:
 - (i) For a non-RECLAIM major stationary source the baseline emissions shall be the amount of emissions allowed under the applicable implementation plan (annual emissions including fugitives and emissions from unpermitted equipment).
 - (ii) For an existing RECLAIM source that subsequently qualifies as a major stationary source for the purposes of this rule the baseline emissions shall be

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the higher of the RTC holdings at the beginning of the year available for use during the same calendar year or actual emissions during the calendar year the source becomes a major stationary source that do not exceed the RTC holdings at the end of the reconciliation period.

- (iii) For a new RECLAIM source that qualifies as a major stationary source for the purposes of this rule the baseline emissions shall be the higher of RTC credits purchased at the beginning of the attainment year or the initial calendar year of operation, as applicable, or actual emissions during the calendar year, not to exceed RTC holdings at the end of the reconciliation period.

If a major stationary source is operational for a period of less than one calendar year in the attainment year or initial year of operation, as applicable, the emissions from the operational period shall be extrapolated over one full calendar year.

- (3) BASIN means the South Coast Air Basin (SOCAB) or the Riverside county portion of the Salton Sea Air Basin (SSAB) and the non-Palo Verde, Riverside county portion of the Mojave Desert air basin (MDAB). The boundaries of each air basin shall be as defined by California Code of Regulations, Section 60104, Title 17, in which a major stationary source is located.
- (4) FEE ASSESSMENT YEAR means the year for which CAA fees are being calculated and assessed under the provisions of this rule.
- (5) MAJOR STATIONARY SOURCE shall, for the purposes of this rule:
 - (A) For a non-RECLAIM source have the same meaning as in Sections 181(b)(4)(B) and 182(d) of the CAA, if applicable, or a Major Polluting Facility as defined in Rule 1302(s) – Definition of Terms.
 - (B) For a RECLAIM source have the same meaning as in paragraph (b)(2) of Rule 3001 - Applicability where the potential to emit for a RECLAIM facility is the higher of:
 - (i) the starting allocation plus nontradeable credits; or
 - (ii) RECLAIM Trading Credits (RTCs) held in the allocation account after trading.RTC's held in the certificate account are not part of the allocation.
- (6) NITROGEN OXIDES (NO_x) means any compound that is an oxide of nitrogen.
- (7) RECLAIM is the Regional Clean Air Incentives Market established by Regulation XX – Regional Clean Air Incentives Market (RECLAIM) which for the purposes of this rule is comprised of:
 - (A) Existing RECLAIM sources with a District issued facility identification number prior to the attainment date; or
 - (B) New RECLAIM sources with a District issued facility identification number issued during or after the attainment year; or

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- (C) An existing source with a District issued facility identification number prior to the attainment date that subsequently becomes a RECLAIM source shall be treated as an existing RECLAIM source for the purposes of determining baseline emissions for the attainment year or the initial year of operation as applicable.

(8) VOLATILE ORGANIC COMPOUND (VOC) is as defined in Rule 102 – Definitions.

(d) Requirements

- (1) For each of the air contaminants, VOC and NO_x, a major stationary source shall be assessed an annual CAA fee payable to the District for excess emissions of these air contaminants in accordance with Section 185 (b) of the CAA as follows:

Annual VOC CAA Non-Attainment Fee = \$5,000 x CPIF x [A – (0.8 x B)], and

Annual NO_x CAA Non-Attainment Fee = \$5,000 x CPIF x [D – (0.8 x E)]

Where:

A = The total amount of VOC emissions actually emitted during the applicable fee assessment year, in tons per year. If A is less than or equal to 80% of B; then there shall be no annual VOC CAA non-attainment fee assessed for the subject year.

B = The VOC baseline emissions as defined in this rule in tons per year.

D = The total amount of NO_x emissions actually emitted during the applicable fee assessment year, in tons per year. If D is less than or equal to 80% of E; then there shall be no annual NO_x CAA non-attainment fee assessed for the subject year.

E = The NO_x baseline emissions as defined in this rule in tons per year.

CPIF = The annual Consumer Price Index (CPI) adjustment factor which is equivalent to the cumulative increase in the CPI beginning with the 1989 change in the index up to and including the change in year prior to the year for which the fees are due. For any calendar year the CPI is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year or the revision of the CPI which is most consistent with the CPI for calendar year 1989 in accordance with Sections 502(b)(3)(B)(v) and 185(b)(3) of the CAA.

- (2) Beginning with the second year after the attainment year and thereafter until the Administrator of the U.S. EPA designates the Basin to be in attainment of the federal

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one-hour standard for ozone, both the VOC and NOx annual CAA fees shall be remitted in accordance with the annual emissions fee billing requirements as established in paragraph (e)(10) of Rule 301 – Permit Fees. A major stationary source that does not pay any or all of the required CAA fees, by the specified due date, shall be subject to the late payment surcharge and permit revocation provisions of subdivision (e) of Rule 301 and is also in violation of this rule and subject to the civil and criminal penalties as provided for in Health and Safety Code 42400 et seq.

(e) Clean Air Act Non-Attainment Fee Programs

Clean Air Act non-attainment fees shall be used to fund stationary and/or mobile source VOC and NOx emission reduction programs based on criteria established by the South Coast Air Quality Management District Governing Board or its designee. Up to five percent of the program revenues can be used for administrative costs.